PUBLIC PROSECUTOR v. LIM HOCK SENG

[R. Cr. J. (Adams J.) September 25, 1962]

[Muar — Criminal Revision No. 6 of 1962]

Road Traffic — Forfeiture — Inquiry — Opportunity to be given to owner before forfeiture order — Road Traffic Ordinance, 1958, s.92(1) and (4).

Criminal Law and Procedure — Transfer of President during hearing or inquiry — Successor may continue — Criminal Procedure Code (Cap. 6), s.261.

The respondent was convicted of two offences under section 92(1) of the Road Traffic Ordinance, 1958. At the end of the case the learned President before exercising his duties under section 92(4) called upon the respondent to show cause as to why the vehicle should not be forfeited under the provisions of that section. Before any enquiry could take place the President was transferred elsewhere and the matter was brought before his successor. The latter refused to entertain any enquiry on the ground that forfeiture under that section is mandatory without enquiry.

Held: (1) the learned President was wrong because all that is mandatory is that there should be an order either ordering forfeiture or ordering release. It follows, therefore, that if the driver who is prosecuted is not the true owner, the true owner ought to be given an opportunity to be heard before order of forfeiture is made;

(2) under section 261 of the Criminal Procedure Code whenever any Magistrate after having heard and recorded the whole or any part of the evidence in an enquiry or a trial ceases to exercise jurisdiction therein his successor may act on the evidence so recorded. There was no reason why the learned President should not have continued with the enquiry as directed by his predecessor.

CRIMINAL REVISION.

Syed Agil Barakbah (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Adams J. (delivering oral judgment): This is an application on revision by the learned Deputy Public Prosecutor and the facts are as follows.

The respondent was convicted of two offences under section 92(1) of the Road Traffic Ordinance, 1958. The vehicle that he was operating as what is commonly known as a pirate taxi was No. SB. 954. At the end of the case the learned President, Inche Mohamed bin Yaacob, before exercising his duties under section 92(4) of the Road Traffic Ordinance (the vehicle being the subject of a hire-purchase agreement) called upon the respondent to show cause as to why the vehicle should not be forfeited under the provisions of section 92(4) of the Road Traffic Ordinance. Before any enquiry could take place the learned President was transferred elsewhere and the matter was brought before Inche Hamzah bin Mohd. Salleh who was his successor. He refused to entertain any enquiry on the grounds that forfeiture under section 92(4) is mandatory without enquiry. With respect to the learned President this is wrong. All that is mandatory is that there should be an order either ordering forfeiture or ordering release. It follows, therefore, that if the driver who is prosecuted is not the true owner, the true owner ought to be given an opportunity to be heard before order of forfeiture is made. Under section 261 of the Criminal Procedure Code whenever any Magistrate after having heard and recorded the whole or any part of the evidence in an enquiry or a trial ceases to exercise jurisdiction therein his successor may act on the evidence so recorded.

It seems to me, therefore, that there was no reason why the learned President should not have continued with the enquiry as directed by his predecessor and the matter must be sent back to him with a direction that he should hear it and he should also cause the hire-purchase company to be served with a notice so that they may also have an opportunity of making representations to him.

Order accordingly.

PUBLIC PROSECUTOR v. TAN TENG GAK

[A. Cr. J. (Adams J.) September 25, 1962]

[Muar — Originating Motion No. 8 of 1962]

Criminal Law and Procedure — Application for extension of time for filing notice of Appeal — Motion for — Affidavit in support of — Fact, statutory provision, etc. to be included therein — Criminal Procedure Code (Cap. 6), s.310.

Posts and Telegraph — Postal delays.

In drafting an affidavit in support of a motion for extension of time for filing notice of appeal the fact that the learned Deputy Public Prosecutor has checked the despatch book should be included in the body of the affidavit and an affidavit should be included sworn by the clerk posting the notice. In the affidavit the section and the Ordinance under which the respondent had been originally charged should be shown because a Judge before granting an application of this nature would normally like to call for the records to satisfy himself that there are possible reasonable grounds for interfering with the acquittal of one of His Majesty's subjects.

Observations on postal delays

CRIMINAL APPEAL.

Syed Agil Barakbah (Deputy Public Prosecutor) for the applicant.

Respondent in person.

Adams J. (delivering oral judgment): This is an application by the Public Prosecutor by way of Motion for extension of time for filing notice of appeal.

The facts alleged in the affidavit sworn by the learned Deputy Public Prosecutor on the 18th September in support of the Motion show that the notice of appeal was sent from the office of the Deputy Public Prosecutor on the 27th August, 1962. The last date for filing such notice of appeal was the 28th August. The notice of appeal was not received in the Batu Pahat Court until the 6th September, 1962.

In drafting the affidavit in support of a motion of this nature I think the fact that the learned Deputy Public Prosecutor has checked the despatch book should be included in the body of the affidavit and an affidavit should be included sworn by the clerk posting the notice. I also considered that in the affidavit the section

and the Ordinance under which the respondent had been originally charged should be shown as I think that the Judge before granting an application of this nature would normally like to call for the records to satisfy himself that there are possible reasonable grounds for interfering with the acquittal of one of His Majesty's subjects. However, in this case I am satisfied that the posting book has been checked and that the amount of opium, namely 12 tahils, does not fall within the maxim *de minimis* and I would grant the application.

I would also hope that this matter is brought to the notice of the Comptroller of Posts as it would seem to me disastrous and likely to reduce Government business to chaos if Government correspondence should take from the 27th of August, 1962, to the 6th of September, 1962, to travel from Johore Bahru to Batu Pahat.

Application granted.

ANGLO-AMERICAN CORPORATION LTD. v. SINGAPORE PRODUCE CO.

[O. C. J. (Buttrose J.) September 26, 1962]

[Singapore — Suit No. 1155 of 1960]

Contract — F.O.B. — Contract executors — Breach — Action for damages — Whether contract for delivery of rubber illegal — Whether licence under Rubber Dealers Ordinance necessary — Rubber Dealers Ordinance (Cap. 199), ss.2, 3 and 18 — Rubber Dealers (Forms) Rules, 1940 — "Purchase rubber" — Meaning of — Rubber Dealers (Amendment) Ordinance, 1962.

Interpretation — Legislative Enactment authoritatively interpreted by judicial decision or by long course of practice used to interpret subsequent legislation.

The plaintiffs by a contract dated July 4, 1960 agreed to sell and the defendants agreed to buy 50 tons of No. 5 R.S.S. Rubber (July 1960) at $1.09¾ per lb. The plaintiffs alleged that the defendants wrongfully neglected or refused to accept or give shipping instructions or pay for the goods whereby the plaintiffs suffered damage. The market or current price at the time when the goods ought to have been accepted was $0.98¾ per pound and the difference between the contract price and the market price in respect of the 50 tons of rubber was $12,460 and this was agreed by the defendants. The defendants admitted the contract and that they bought the rubber but they refused to take delivery as they maintained that the contract was illegal because they were not licensed under the Rubber Dealers Ordinance to purchase rubber.

Held: the contract was a F.O.B. contract executory in its terms which did not involve delivery at the time it was made and accordingly the contract was not illegal because of the defendants' failure to have a licence under section 3 of the Rubber Dealers Ordinance. It is only when the purchaser seeks to take delivery of specific rubber by way of completion of a contract that he is bound to have a licence to take the delivery and a licensed store into which the goods may be delivered.

The statement in the judgment of Griffith C.J. in *D'Emden* v. *Pedder* (5) appearing at p. 110 with respect to interpretation of statute adopted.

Cases referred to:—

(1) *Syn Thong & Co.* v. *Tong Joo (Hoo) & Co.* [1929] S.S.L.R. 39.

(2) *Stanton Nelson & Co. Ltd.* v. *Mizrahie* [1958] M.L.J. 45, 47, 48 & 49; [1958] M.L.J. 97, C.A.

(3) *Chai Sau Yin* v. *Liew Kwee Sam* [1962] M.L.J. 152.

(4) *Webb* v. *Outrim* [1907] A.C. 89.

(5) *D'Emden* v. *Pedder* (1904), 1 C.L.R. 91, 110.

(6) *Ng Kean Tek* v. *Kam Hock Lye* [1950] M.L.J. 280.

ACTION FOR DAMAGES.

J. E. Lloyd for the plaintiff.

L. A. J. Smith for the defendant.

Cur. Adv. Vult.

Buttrose J.: This is an action for damages for breach of contract. The plaintiffs' claim was that by a contract in writing dated the 4th July, 1960, they agreed to sell and the defendants agreed to buy 50 tons of No. 5 R.S.S. Rubber (July, 1960) at a price of $1.09½ per pound. They alleged that the defendants wrongfully neglected or refused to accept or give shipping instructions or pay for the goods whereby the plaintiffs suffered damage. The market or current price at the time when the goods ought to have been accepted was $0.98¾ per pound and the difference between the contract price and the market price in respect of the 50 tons of rubber was $12,460 and this was agreed by the defendants.

The defendants while admitting the contract and that they bought the rubber refused to take delivery as they maintained the contract was illegal because they were not licensed under the Rubber Dealers Ordinance (Chapter 199), hereinafter referred to as 'the Ordinance', to purchase rubber.

The position was that the defendants originally had a licence to ship rubber in 1959 but at the date of the present contract it had expired and it was only after the contract had been entered into that they acquired a new licence to ship rubber. The defendants never at any time had a licence to purchase rubber.

The Secretary of the Malayan Rubber Export Registration Board established under the Rubber Shipping and Packing Control Ordinance (Chapter 183) gave evidence that in July, 1960, the defendants applied for a licence to ship rubber for export and it was issued to them on the 14th July, 1960. He said his Board was not concerned to ascertain if the applicant has a licence to purchase rubber.

Section 3 of the Ordinance provides that no person shall purchase, treat or store rubber unless he shall have been duly licensed in that behalf by a licensing officer. The meaning the words "purchase rubber" bear in that section were considered over thirty years ago in the case of *Syn Thong & Co.* v. *Tong Joo (Hoo) & Co.* (1) and that and subsequent decisions were reviewed in *Stanton Nelson & Co. Ltd.* v. *Mizrahie* (2) at pages 47, 48 and 49.

The effect of those decisions was that the words "purchase rubber" as used in section 3 of the Ordinance refer to present purchases of the commodity completed by delivery and not to forward or executory contracts to purchase unascertained rubber by description which do not